

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4017

BY DELEGATE HOLSTEIN AND KUMP

[Originating in the Committee on the Judiciary; Reported
on January 25, 2024]

1 A BILL to amend and reenact §3-2-6, §3-2-10, §3-2-13, §3-2-25, §3-2-32, and §3-2-34 of the
2 Code of West Virginia, 1931, as amended; and to amend and reenact §3-3-3 and §3-3-9
3 of said code, all relating to general modifications to early voting procedures; registration
4 by mail; voter registration services; unlawful registration or rejection of voter; alteration or
5 destruction of records; early in-person voting; removing obsolete language; and creating
6 criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election closes on the 21st day before the election or on
2 the first day thereafter which is not a Saturday, Sunday, or legal holiday at

3 (1) 11:59 p. m. for online registration; or

4 (2) at the close of business at county clerks' offices and the Secretary of State's offices.

5 (b) An application for voter registration, transfer of registration, change of name, or
6 change of political party affiliation submitted by an eligible voter by the close of voter registration
7 is effective for any subsequent primary, general, or special election if the following conditions
8 are met:

9 (1) The application contains the information required by §3-2-5(c) of this code.
10 Incomplete applications for registration containing information which are submitted within the
11 required time may be corrected within four business days after the close of registration if the
12 applicant provides the required information; and

13 (2) The application is received by the appropriate clerk of the county commission no later
14 than the hour of the close of registration or is otherwise submitted by the following deadlines:

15 (A) If mailed, the application shall be addressed to the appropriate clerk of the county
16 commission and is postmarked by the postal service no later than the date of the close of
17 registration. If the postmark is missing or illegible, the application is presumed to have been

mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application is received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application is received by the clerk, deputy clerk, or registrar no later than the close of registration;

(D) If accepted through an approved electronic voter registration system, the application is received by the clerk of the county commission or other entity designated by the Secretary of State no later than 11:59 p.m. on the final day of registration; and

(3) The verification notice required by the provisions of §3-2-16 of this code mailed to the voter at the residence indicated on the application is not returned as undeliverable.

§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by §3-2-5 of this code.

(b) To the extent possible, with funds allocated annually for such purpose, the Secretary of State shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The Secretary of State shall make a record of all requests by entities or organizations for 200 or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The Secretary of State shall also require the entity or organization requesting the forms to provide contact information on a form prescribed by the Secretary of State. The Secretary of State may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms

15 available for distribution through organized voter registration programs within the county. The
16 clerk of the county commission shall make a record of all requests by entities or organizations
17 for ten or more forms with a description of the dates and locations in which the proposed
18 registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount
19 per group.

20 (d) The applicant shall provide all required information and, only after completing the
21 information, sign the prescribed applicant's oath under penalty of perjury as provided in §3-2-36
22 of this code. No person may alter or add any entry or make any mark which would alter any
23 material information on the voter registration application after the applicant has signed the oath:
24 *Provided, That the clerk of the county commission may correct any entry upon the request of*
25 *the applicant provided the request is properly documented and the correction is dated and*
26 *initialed by the clerk.*

27 (e) Completed applications shall be mailed or delivered to the clerk of the county
28 commission of the county in which the voter resides. If a clerk receives a completed mail
29 application form from a voter whose residence address is located in another county, the clerk
30 shall forward that application within three days to the clerk of the county commission of the
31 county of the applicant's residence.

32 (f) Upon receipt of the application for registration by the appropriate clerk of the county
33 commission, the clerk shall:

34 (1) Attempt to establish whether the residence address given is within the boundaries of
35 an incorporated municipality and, if so, make the proper entry required for municipal residents to
36 be properly identified for municipal voter registration purposes; and

37 (2) Immediately begin the verification process required by the provisions of §3-2-16 of
38 this code.

(g) Any person who registers by mail pursuant to this section and who has not previously voted in an election in the state shall be required to present the following forms of identification to the Secretary of State or clerk of the county commission:

(1) In the case of an individual who votes in person, a current and valid photo identification; or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter;

(2) In the case of an individual who votes by mail, a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter, submitted with the ballot.

(h) An individual who desires to vote in person or by mail, but who does not meet the requirements of subsection (g) of this section, may cast a provisional ballot.

(i) Subsection (g) of this section does not apply in the case of a person:

(1) Who registers to vote by mail under 42 U.S.C. §1973gg-4, *et seq.*, and submits as part of his or her registration either a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;

(2) (A) Who registers to vote by mail under 42 U.S.C. §1973gg-4, *et seq.*, and submits with his or her registration either a driver's license number or at least the last four digits of the individual's social security number; and (B) with respect to whom the Secretary of State or clerk of the county commission matches the information submitted under paragraph (A) of this subdivision with an existing state identification record bearing the same number, name and date of birth as provided in the registration; or

(3) Who is:

(A) Entitled to vote by absentee ballot under 42 U.S.C. §1973ff-1, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act;

65 (B) provided the right to vote otherwise than in person under 42 U.S.C. §1973ee-
66 1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and
67 Handicapped Act;

68 (C) entitled to vote otherwise than in person under any other federal law: *Provided, That*
69 any person who has applied for an absentee ballot pursuant to the provisions of §3-3-1(b)(1) of
70 this code; §3-3-1(c)(2) (B) of this code; §3-3-1 (3) of this code; or §3-3-1(c) of his code may not
71 have his or her ballot in that election challenged for failure to appear in person or for failure to
72 present identification.

73 (j) Any person who submits a state mail voter registration application to the clerk of the
74 county commission in the county in which he or she is currently registered for the purpose of
75 entering a change of address within the county, making a change of party affiliation or recording
76 a change of legal name ~~shall~~ may not be required to make his or her first vote in person or to
77 present identification or proof of age.

78 (k) ~~On and after July 1, 2006, any~~ Any person who agrees to mail or to deliver a signed
79 voter registration application to the Secretary of State or the clerk of the county commission and
80 who intentionally interferes with the applicant's effort to register either by destroying the
81 application or by failing to mail or to deliver the application in a timely manner is guilty of a
82 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in a
83 jail for not more than one year, or both fined and confined. For purposes of this subsection, the
84 mailing or delivery of an application is timely if it is mailed or delivered within 15 days after the
85 applicant signs the application or in accordance with the provisions of §3-2-1 *et seq.* of this code
86 for processing before the closing of the registration records for the pending election, whichever
87 comes first.

88 (l) ~~On and after July 1, 2006, any~~ Any person who intentionally solicits multiple
89 registrations from any one person or who intentionally falsifies a registration application is guilty

of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.

(m) Any person who intentionally coerces or offers payment in exchange for a registration application from any one person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.

§3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality.

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) The following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the Aid to Families with Dependent Children (AFDC) program, the Women, Infants and Children (WIC) program and the Medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices;

(4) Armed services recruitment offices, as required by federal law; and

(5) The Department of Revenue, if it provides a check box on any form provided to the general public authorizing the Department of Revenue to request a voter registration application by mail from the Secretary of State on behalf of the applicant.

(c) No later than October 1, 1994, the Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and

19 offices established and operating with state funds which administer or provide public assistance
20 or services to persons with disabilities and shall promulgate an emergency rule pursuant to the
21 provisions of chapter 29A of this code designating the specific programs and offices required to
22 provide voter registration services in order to comply with the requirements of this section and
23 the requirements of the National Voter Registration Act of 1993 (42 U.S.C. §1973gg, *et seq.*).
24 The offices and programs so designated shall begin providing voter registration services on
25 January 1, 1995.

26 (d) In each even-numbered year, the Secretary of State shall, in conjunction with the
27 designated representatives of the appropriate state agencies, perform the review as required by
28 the provisions of subsection (c) of this section. The Secretary of State shall periodically review
29 and revise, if necessary, the legislative rule designating the specific agencies required to
30 provide voter registration services.

31 (e) Each state agency required to provide services pursuant to the provisions of this
32 article shall designate a current employee of that agency to serve as a state supervisor to
33 administer voter registration services required in all programs under the agency's jurisdiction.
34 Each state supervisor is responsible for coordination with the Secretary of State, overall
35 operation of the program in conjunction with services within the agency, designation and
36 supervision of local coordinators and for the review of any complaints filed against employees
37 relating to voter registration as provided in this chapter.

38 (f) The state supervisor shall designate a current employee as a local coordinator for
39 voter registration services for each office or program delivery center who shall be responsible
40 for the proper conduct of voter registration services, timely return of completed voter registration
41 applications, proper handling of declinations and reporting requirements. Notice of the
42 designation of these persons shall be made upon request of the Secretary of State and within
43 five days following any change of designation. Each local coordinator shall receive biannual
44 training provided by the Secretary of State.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of §3-2-5 of this code.

(h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of 42 U.S.C. §1973gg, *et seq.*, section 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the "declination form".

(i) A person who provides voter registration services may not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(5) Intentionally coerce or offer payment in exchange for a registration application from any one person.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files; comparison of data records; confirmation notices; public inspection list.

1 (a) The systematic purging program provided in this section shall begin no earlier than
2 October 1 of each odd-numbered year and shall be completed no later than February 1 of the
3 following year. The clerk of the county commission shall transmit or mail to the Secretary of
4 State a certification that the systematic purging program has been completed and all voters
5 identified as no longer eligible to vote have been canceled in the statewide voter registration
6 database in accordance with the law no later than February 15 in the year in which the purging
7 program is completed.

8 (b) The Secretary of State shall provide for the comparison of data records of all
9 counties. The Secretary of State shall, based on the comparison, prepare a list for each county
10 which shall include the voter registration record for each voter shown on that county's list who
11 appears to have registered or to have updated a voter registration in another county at a
12 subsequent date. The resulting lists shall be returned to the appropriate county and the clerk of
13 the county commission shall proceed with the confirmation procedure for those voters as
14 prescribed in §3-2-26 of this code.

15 (c) The Secretary of State may provide for the comparison of data records of counties
16 with the data records of the Division of Motor Vehicles, the registrar of vital statistics and with
17 the data records of any other state agency which maintains records of residents of the state, if
18 the procedure is practical and the agency agrees to participate. Any resulting information
19 regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of
20 the county commission shall proceed with the confirmation procedure as prescribed in section
21 twenty-six of this article.

22 (d) The records of all voters not identified pursuant to the procedures set forth in
23 subsections (b) and (c) of this section shall be combined for comparison with United States
24 Postal Service change of address information, as described in section 8(c)(A) of the National
25 Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*). The Secretary of State shall
26 contract with an authorized vendor of the United States Postal Service to perform the

comparison. The cost of the change of address comparison procedure shall be paid for from the combined voter registration and licensing fund established in §3-2-12 of this code and the cost of the confirmation notices, labels and postage shall be paid for by the counties.

(e) The Secretary of State shall return to each county the identified matches of the county voter registration records and the postal service change of address records.

(1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice pursuant to §3-2-26 of this code and of section 8(d)(2) of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*). The notice shall be mailed, no later than December 31, to the new address provided by the postal service records or to the old address if a new address is not available.

(f) The clerk of the county commission shall indicate in the statewide voter registration database the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed.

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (e) of this section, the clerk shall immediately enter the date and type of response received in the statewide voter registration database and shall then proceed in accordance with the provisions of §3-3-26 of this code.

(h) For purposes of complying with the record keeping and public inspection requirements of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, *et seq.*), and with the provisions of §3-2-27 of this code, the public inspection lists shall be maintained either in printed form kept in a binder prepared for such purpose and available for public inspection during regular business hours at the office of the clerk of the county commission or in read-only

53 data format available for public inspection on computer terminals set aside and available for
54 regular use by the general public. Information concerning whether or not each person has
55 responded to the notice shall be entered into the statewide voter registration database upon
56 receipt and shall be available for public inspection as of the date the information is received.

57 (i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of
58 subsection (e) of this section who fails to respond to the notice or to update his or her voter
59 registration address by February 1 immediately following the completion of the program, shall
60 be designated inactive in the statewide voter registration database. Any voter designated
61 inactive shall be required to affirm his or her current residence address, on a form prescribed by
62 the Secretary of State, upon appearing at the polls to vote.

63 (j) In addition to the preceding purging procedures, all counties using the change of
64 address information of the United States Postal Service shall also, once each four years during
65 the period established for systematic purging in the year following a presidential election year,
66 conduct the same procedure by mailing a confirmation notice to those persons not identified as
67 potentially ineligible through the change of address comparison procedure but who have not
68 updated their voter registration records and have not voted in any election during the preceding
69 four calendar years. The purpose of this additional systematic confirmation procedure shall be
70 to identify those voters who may have moved without filing a forwarding address, moved with a
71 forwarding address under another name, died in a another county or state so that the certificate
72 of death was not returned to the clerk of the county commission, or who otherwise have become
73 ineligible.

§3-2-32. Unlawful registration or rejection of voter; penalties.

1 (a) Any registrar or clerk of the county commission who knowingly registers or permits to
2 be registered a person not lawfully entitled to be registered, or who knowingly refuses to register
3 a person entitled to be registered, or who knowingly assists in preventing such person from
4 being registered, or who inserts or intentionally permits to be inserted a name or other entry in

5 any registration form or file, or who intentionally coerces or offers payment in exchange for an
6 unlawful completed registration application from any one person, knowing or having reason to
7 know that the entry should not be made, shall be guilty of a misdemeanor and, upon conviction,
8 shall be fined not more than one \$1,000 or confined in the county jail for not more than one
9 year, or both, in the discretion of the court.

10 (b) Any person who registers or applies to be registered, or persuades or assists another
11 to be registered, or who applies for a change of residence address, knowing or having reason to
12 know that he or she is not entitled to be registered or to have his or her residence address
13 changed on the registration record, or any person who declares an address known not to be his
14 or her legal residence or who impersonates another in an application for registration, or who
15 intentionally coerces or offers payment in exchange for an unlawful completed registration
16 application from any one person, shall be guilty of a misdemeanor and, upon conviction, shall
17 be fined not more than \$1,000 or confined in the county jail for not more than one year, or both,
18 fined and confined. ~~in the discretion of the court~~

§3-2-34. Alteration or destruction of records; penalties.

1 (a) Any person who wrongfully and intentionally inserts, ~~or~~ offers payment in exchange
2 for, or permits to be wrongfully inserted any name or material entry on any registration form, file
3 or any other record in connection with registration, or who wrongfully alters or destroys an entry
4 which has been duly made, or who wrongfully takes and removes any such registration form, or
5 any other record authorized or required in connection with registration from the custody of any
6 person having lawful charge thereof, shall be guilty of a misdemeanor and, upon conviction,
7 shall be fined not more than \$1,000 or confined in the county jail for not more than one year, or
8 both, in the discretion of the court.

9 (b) Any person, in the absence of specific authority provided under the provisions of this
10 article, who destroys or attempts to destroy any registration document or record, or who
11 removes or attempts to remove such registration document or record, shall be guilty of a

12 misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$1,000 or
13 confined in the county jail for not more than one year, or both, fined and confined. ~~in the~~
14 ~~discretion of the court~~

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-3. Early voting in person.

1 (a) The voting period for early in-person voting is to be conducted during regular
2 business hours beginning on the thirteenth day before the election and continuing through the
3 third day before the election. Additionally, early in-person voting is to be available from 9:00
4 a.m. to 5:00 p.m. on Saturdays during the early voting period.

5 (b) Any person desiring to vote during the period of early in-person voting shall, upon
6 entering the election room, clearly state his or her name and residence to the official or
7 representative designated to supervise and conduct ~~absentee~~ early in-person voting. If that
8 person is found to be duly registered as a voter in the precinct of his or her residence, he or she
9 is required to sign his or her name in the space marked "signature of voter" on the pollbook. If
10 the voter is unable to sign his or her name due to illiteracy or physical disability, the person
11 assisting the voter and witnessing the mark of the voter shall sign his or her name in the space
12 provided. No ballot may be given to the person until he or she signs his or her name on the
13 pollbook.

14 (c) When the voter's signature or mark is properly on the pollbook, two qualified
15 representatives of the official designated to supervise and conduct ~~absentee~~ early in-person
16 voting shall sign their names in the places indicated on the back of the official ballot.

17 (d) If the official designated to supervise and conduct absentee voting determines that
18 the voter is not properly registered in the precinct where he or she resides, the clerk or his or
19 her representative shall challenge the voter's absentee ballot as provided in this article.

(e) The official designated to supervise and conduct ~~absentee~~ early in-person voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: *Provided, That* the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the ~~absentee~~ early in-person voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the ~~absentee~~ early in-person voting: *Provided, however,* That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the ~~absentee~~ early in-person voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

§3-3-9. Voting in person after having received and after having voted an absent voter's ballot; penalties.

1 (a) Any person who has applied for and received an ~~absent voter's~~ absentee ballot but
2 has not voted and returned the same to the official designated to supervise and conduct
3 absentee voting may vote in person at the polls on election day provided he or she returns the
4 ~~absent voter's~~ absentee ballot to the election commissioners at the polling place. Upon return of
5 the ~~absent voter's~~ absentee ballot the election commissioners shall destroy the ballot in the
6 presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by
7 instructions issued by the Secretary of State. ~~In the event~~ If the person does not return the
8 ~~absent voter's~~ absentee ballot, he or she will have his or her vote challenged by one or more of
9 the election commissioners or poll clerks.

10 (b) No person who has voted an ~~absent voter's~~ absentee ballot may vote in person on
11 the day of the election. If any person, knowingly and willfully violates the provisions of §3-3-9(b)
12 of this Code and casts a vote in person on the day of the election after having voted an
13 absentee ballot, then that person shall be guilty of a felony and, on conviction thereof, shall be
14 fined not more than \$10,000 or imprisoned in a state correctional facility not less than one year
15 but not more than 10 years, or both fined and imprisoned.

NOTE: The purpose of this bill is to make general modifications to early voting procedures; registration by mail; voter registration services; unlawful registration or rejection of voter; alteration or destruction of records; early in person voting; and criminal penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.